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July 9, 2019

Hon. Anthony P. Patti
United States Magistrate Judge
Theodore Levin United States Courthouse
231 Lafayette Boulevard, Room 624
Detroit, MI 48226

*Re: State Farm Mutual v. Elite Health Centers, et al, 16-cv-13040
Letter in Response to July 1, 2019 Letter from Counsel for State Farm*

Dear Magistrate Judge Patti:

My firm retained North Coast Legal, PLC for Ms. Rosenberg to perform an audit to verify compliance with this Honorable Court's May 9, 2019 and July 1, 2019 orders. This correspondence is sent to this Honorable Court as written verification of compliance as requested by the Plaintiff and this Honorable Court.

FACTUAL BACKGROUND

Janet Rosenberg is an employee of the Mike Morse Law Firm and is non-party witness in the above referenced matter. Plaintiff State Farm Mutual (State Farm) is seeking production of records from Ms. Rosenberg dating back to January 1, 2010 on seven specific topics relating to the Defendant's interactions with the Mike Morse Law Firm.

On August 6, 2018, counsel for State Farm served a subpoena and subpoena rider seeking relevant communications in the possession of Ms. Rosenberg pertaining to the above referenced matter.

On May 9, 2019, This Honorable Court entered an Interim Order instructing Ms. Rosenberg to "complete and submit online Google (or Gmail) form(s) for the two 'deactivated' email accounts" identified as jlynnrosenberg@gmail.com and janjanrose911@gmail.com. The Court ordered that Ms. Rosenberg complete this submission by May 17, 2019.

On May 10, 2019, counsel was present for two hours when Information Technology (IT) staff attempted to recapture and restore emails to no avail.

On May 17, 2019, (IT) staff again attempted to retrieve emails from the requested accounts. Additionally, IT staff investigated Ms. Rosenberg's iCloud account in order to investigate if any of the emails were associated with the account. This additional attempt was unsuccessful as no messages stored on the account nor any other data responsive to the subpoena were located.

On Tuesday, May 21, 2019, Google Legal Support responded to an inquiry for these materials. In its response, Google Legal Support stated "Google does not keep passwords to subscriber accounts in a manner allowing them to be retrieved. Since the user does not have access to the account, Google will not be able to verify the ownership of the account."

On May 22, 2019, counsel for State Farm provided a document titled "Serving Civil Subpoenas or other Civil Requests on Google."

On July 1, 2019 State Farm sent a correspondence to this Honorable Court arguing that Ms. Rosenberg had failed to comply with its May 9, 2019 order. The sum and substance of State Farm's supporting documentation were email exchanges between its counsel and counsel for Ms. Rosenberg. Considering this correspondence, this Honorable Court entered an Order on July 1, 2019 directing Ms. Rosenberg to describe, in writing:

- (1) the steps she took to restore and recover emails from the two email accounts [jlynnrosenberg@gmail.com and janjanrose911@gmail.com] ... as ordered by the Court on May 9, 2019; and, (2) clarifying whether janjanrose911@gmail.com is or was her email account, and, if not, to provide the correct email address.

Counsel for Ms. Rosenberg responded to State Farm later on the evening of July 1, 2019. In its response, counsel stated that it would "comply further on or before July 9, 2019" with this Honorable Court's order.

Regarding the email accounts jlynnrosenberg@gmail.com and janjanrose911@gmail.com, counsel stated that those accounts had been used since 2010 but have been "deactivated, due to the passage of time (sic) and are not accessible." Counsel stated that the emails were hosted by Google and that "a member of my staff contacted Google's Legal Department to ask for assistance in recovering email accounts."

To date, Ms. Rosenberg has not been able to access any of the information requested from Google, the email service provider, concerning the janjanrose911@gmail.com or jlynnrosenberg@gmail.com accounts. In order to make an audit of the steps taken I have reviewed the relevant docket entries and court orders pertaining to Ms. Rosenberg's

electronically stored information (ESI), reviewed relevant correspondences from the parties, and interviewed counsel and Ms. Rosenberg to identify and validate steps taken to attempt to retrieve the requested materials.

Attached hereto and incorporated by reference is the analysis of Michael C. Naughton, an attorney who specializes in electronically stored information. He was retained to verify the steps taken and determine what, if any, further steps could be employed to respond to the Court's order.

Respectfully submitted,

JAMES C. THOMAS, P.C.



James C. Thomas, Esq.

JCT/ama

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notices of electronic filing to all counsel of record.

By: /s/ James C. Thomas s
James C. Thomas, Attorney for Janet Rosenberg

Exhibit 1

NORTH COAST LEGAL

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July 8, 2019

James C. Thomas
James C. Thomas, P.C.
12900 Hall Road, Suite 350
Sterling Heights, MI 48313

Re: State Farm Mutual v. Elite Health Centers, et al, 16-cv-13040

Dear Mr. Thomas:

For your consideration is my analysis of the steps taken to verify whether good faith attempts were made to (1) retrieve email data from the email addresses jlynnrosenberg@gmail.com and janjanrose911@gmail.com; and (2) investigate if best efforts were made to determine if the email address janjanrose911@gmail.com was an associated with Janet Rosenberg.

Having had an opportunity to review materials in this matter, interview individuals involved in the steps to attempt to restore data, and conduct my own attempts to verify the status of the email accounts, it is my opinion that best efforts were made to try and retrieve this data. I am very happy to answer any and all questions you may have pertaining to my investigation into this matter.

ANALYSIS

A. Reasonable Measures Were Taken by Ms. Rosenberg and her Counsel to Attempt to Restore and Recover Emails from jlynnrosenberg@gmail.com and janjanrose911@gmail.com

First, attempts were made to access the accounts by using the username and password. These attempts were unsuccessful as Ms. Rosenberg has no record of the passwords and does not remember the passwords for the accounts.

Second, an attempt was made to resurrect emails from these records by extracting a forensic image of a computer used by Ms. Rosenberg. A virtualized instance of the computer image was created, indexed and reviewed. After an

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analysis, there were no stored or otherwise cached mailboxes saved on the computer for either of the accounts in question.

Next, an attempt was made following the protocol sent by State Farm to obtain access through a recovery email. A log was made recording the execution of each and every step of that protocol. Notwithstanding these efforts, attempts to retrieve emails from this protocol were unsuccessful.

I interviewed Ms. Rosenberg of her online credentials, password-keeping practices, computer and phone profiles, and other electronic data that might contain the sought after information. I also conducted an interview of IT personnel who were responsible for attempting to retrieve the email data. Attempts were made by the personnel to restore the email data not only through Google and its servers, but also third-party platforms such as Apple's iCloud. These attempts proved to be fruitless.

Last, I performed independent queries of the email addresses and found that the email addresses do not exist as functioning emails on Gmail or Google servers.¹

B. Ms. Rosenberg Reports a Good Faith Basis to Believe that She Was the Holder of the Email Account janjanrose911@gmail.com

In my interview with Ms. Rosenberg, she confirmed her belief that she was the holder of the email account janjanrose911@gmail.com. Given that the suffix of the email address is "gmail", the provider of the account would be Google. Google, in its response, stated that it is not able to verify the ownership of the account without the correct password. Both the undersigned and Ms. Rosenberg have attempted to find more evidence of her ownership of this account but was unable to locate any relevant material. Ms. Rosenberg does not believe there is another account other than janjanrose911@gmail.com that exists or is otherwise responsive to the subpoenas and court orders.

¹ I used www.verify-email.org to search if the emails jlynnshepherd@outlook.com and janjanrose911@gmail.com were in use. This site verifies the email address format, the email address domain and if the smtp (simple mail transfer protocol) server for those accounts exist. In both instances, the return was that the email addresses do not exist. This site does not confirm when or if an email address was created. Rather, it performs a query to the server used to send email for these addresses to determine if those accounts currently exist.

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BACKGROUND

I have handled complex federal litigation for the past twelve years. I have been appointed by the Sixth Circuit Court of Appeals in multiple federal multi-defendant criminal "mega case" designated matters in the Eastern District of Michigan. Such appointments include United States v. Stone, et al (Case No. 10-cr-20123); United States v. Nagi (Case No. 06-cr-20465); United States v. Sutherland (Case No. 11-cr-20129); and United States v. Kilpatrick (Case No. 10-20403). Each of these matters involved large volumes of electronically stored information. In these cases, I was responsible for securely storing data, securely disseminating data to other parties, and creating and providing logs of data generated.

Additionally, I have been retained to represent corporations to engage in internal investigations concerning ESI; consulting on proper techniques to procure and store ESI; index and search large volumes of ESI; and comply with preservation notices and the federal and Michigan Rules of Evidence pertaining to appropriate methods of presenting ESI to opposing parties in litigation.

Last, I am a writer and speaker concerning information security and courtroom technology. I am a frequent author and speaker on topics concerning advances in technology and the practice of law. I have attached a list of publications and presentations detailing my work on information security, best practices for data security for attorneys and public education on digital security.

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CONCLUSION

For the reasons set forth above, my audit has concluded that Ms. Rosenberg and others on her behalf have made a good faith effort to comply with Magistrate Judge Patti's May 9, 2019 order. I am happy to discuss any questions you may have concerning my investigation into this matter.

Sincerely,

NORTH COAST
L E G A L

Michael C. Naughton

Exhibit 2

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MICHAEL C. NAUGHTON Curriculum Vitae

EXPERIENCE

TCNEWTECH, Traverse City, MI

6/2015-Present

Officer and Board Member

- Early member of TCNewTech, a community organization that provides a forum for entrepreneurs and community members to network and present on their technology-based businesses.
- Assist the President of TCNewTech with presentations, meet with prospective speakers from across the country, and provide legal consultation as the organization grows.
- As a member of the fiber subcommittee, meet with Traverse City Commissioners, members of Traverse City Light & Power, attend TCL&P board meetings, and engage in educational efforts in the community about the benefits of high-speed fiber internet.
- Monthly speaker on privacy and security issues in an effort to educate the community about strategies on securing personal and professional data.
- Created the 501(c)(3) corporate structure of TCNewTech, drafted bylaws, strategized on the composition of TCNewTech monthly meetings and created a mechanism for paid memberships.
- Served as the chairperson of a Traverse City Smartzone Exploration Committee which met with executives from the Michigan Economic Development Corporation regarding possible Smartzone scenarios for Traverse City.
- Collaborated on the long-term strategic development of a startup incubator in Traverse City which would ultimately become 20 Fathoms.

GRAND TRAVERSE COUNTY ECONOMIC DEVELOPMENT CORPORATION 1/2017-Present

Treasurer

- Day chairman for the Front Street Irregulars, a group of business owners and thought leaders who explore a wide-range of initiatives in the Grand Traverse community.
- Restructured the bylaws of the Grand Traverse Economic Development Corporation.
- Organized a one-day conference for companies across the Grand Traverse region to learn about and compete for federal defense contracts.
 - Invited and hosted decision makers from the Department of Defense.
 - Engaged in fundraising with the MEDC, the GTEDC and other institutions to support this conference.
 - Invited faculty from NMC and Michigan Technological University to attend and interface with federal decision makers.
- Initiated dialogue with Michigan Technological University and serve as a member of the Michigan Technological University Exploratory Committee.

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- o Established relationships with faculty and staff at Michigan Technological University to explore opportunities for MTU to further engage and invest in the Grand Traverse region.

NORTH COAST LEGAL, PLC, Traverse City, MI

2/2017-Present

Co-Owner/Attorney

- Represent corporate clients in federal litigation in Traverse City, Detroit and Grand Rapids.
- Consult with law firms on federal strategies involving electronic communications, GPS location data and Rule 34 discovery requests.
- Successfully argue on behalf of clients in appellate matters in the Michigan Supreme Court and the Michigan Court of Appeals.
- Assist corporations with compliance of federal and state requirements for limited liability companies and non-profit corporations.
- Consult with a multi-national client in a federal criminal matter concerning the First Amendment.

LAW OFFICES OF MICHAEL C. NAUGHTON, PLLC, Traverse City, MI

9/2014-2/2017

Owner

- Consultant for the Michigan Indigent Defense Commission, a state agency tasked with reform of the criminal defense system.
- Responsible for the largest region in Michigan, comprised of the Upper Peninsula as well the northern Lower Peninsula.
- Worked with county commissioners, county administrators, judges and attorneys on compliance with the Michigan Indigent Defense Act.
- Collaborated on developing and implementing minimum standards for criminal defense attorneys to comply with the Michigan Indigent Defense Act.
- Conducted training sessions with attorneys on securely accessing discovery data, the use of cloud-based tools, and efficiently sorting and searching through electronic materials.

THOMAS & NAUGHTON, P.C. (Of counsel, O'Reilly Rancilio, P.C.), 12/2005-9/2014

Partner

- Developed and oversaw the implementation of legal policies and compliance regulations for a Tier 1 automotive supplier.
- Oversaw budget allocations, tracked expenditures, implemented cost-saving measures, maintained documentation and ensured spending was aligned with partnership's bottom line.
- Represented a large multinational bank in a \$125M fraud claim involving millions of pages of discovery.

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- Successfully defended an 18 U.S.C. § 1983 claim against the former Mayor of the City of Detroit. The Sixth Circuit Court of Appeals affirmed the trial court's granting of my Motion for Summary Judgment. See *Flagg v. City of Detroit*, 715 F. 3d 165 (6th Cir. 2013).
- Successfully argued at the United States Supreme Court. See *Nagi v. United States*, 134 S. Ct. 2288 (2014). Judgment was vacated and the case was remanded to the Sixth Circuit Court of Appeals.
- Created paperless, cloud file system for multisite office with immediate, remote access to files via smartphones, laptops and tablets.

EDUCATION

UNIVERSITY OF DETROIT MERCY, Detroit, MI

- **Juris Doctor** - 2007
 - Scholarship Recipient
 - Member, Moot Court National Team
 - Member, Dean's Tutorial Society

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW, Study Abroad in Moscow, Russia - 2005

- Studied Russian Law and East-West Trade Law in Moscow and St. Petersburg
- Presented to American and Russian law students on developments and differences between human rights law and the Russian Federation and the United States.

WAYNE STATE UNIVERSITY, Detroit, MI (1997-2002)

- **Bachelor of Arts**, English, *cum laude* – 2002

HONORS AND SERVICE

- **President**, Grand Traverse Antrim Leelanau Bar Association, 2018-2019
- **Executive Board Member**, Utopia Foundation, 2015-Present
- **Board Member**, 20Fathoms, 2017-Present
- **Member**, Cherryland Electrical Cooperative *Emerging Leaders Program*, 2018
- **40 under 40**, *Traverse City Business News*, 2017
- **Rising Star**, *Superlawyers* magazine for the years 2013-2019
- **Board of Governors**, Criminal Defense Attorneys of Michigan, 2015-2018
 - Chairperson, Technology Committee
- **Pro Bono Volunteer**, Third Level Legal Services, 2015-2018

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PUBLICATIONS AND PRESENTATIONS

- **The Impact of New Data Protection Laws on Local Businesses**, (Traverse City Business News, September 2018)
- **Law Firms Under Cyber-Seige**, Master Lawyers Section State Bar of Michigan (Spring 2018)
- **Modern Law Practice**, Woman Lawyers Association, (April 2018)
- **Update and Fundraising for 20 Fathoms**, Front Street Irregulars (May 2018)
- **Update on Traverse City Smartzone**, Front Street Irregulars (January 2018)
- **How to Stay Out of Legal Trouble**, Startology presentation (October 2017)
- **Practicing Smarter to Save Time and Money**, Michigan Assigned Appellate Attorney Service (November 2016)
- **MIDC Compliance and the Upper Peninsula**, State Bar of Michigan (October 2016)
- **Update on MIDC**, Circuit Court Judges for SCAO Region III & IV (October 2016)
- **Update on MIDC**, District Court Judges for SCAO Region III & IV (October 2016)
- **Update on MIDC**, Court Staff for SCAO Region III & IV (September 2016)
- **Report on Northern Michigan and the Upper Peninsula**, Michigan Indigent Defense Commission (June 2016)
- Frequent guest on The Ron Jolly Show, WTCM AM 580, to speak on the air concerning issues involving technology and the law
- **Stored Communications Act and Entrepreneurs**, TCNewTech (October 2015)
- **Managing E-Discovery Costs**, ICLE (July 2015)
- **Electronic Discovery and the Canada Evidence Act**, Upper Canada Legal Institute
- Featured in "New Technology, Traditional Legal Tests" Canadian Lawyer
- Appeared on Detroit ABC affiliate WXYZ as an expert for a live, in-studio interview on the Target credit card breach (December 2013)
- **Buttressing Your Investigation with Cell Phone Data**, Institute for Criminal Justice Education, Auburn University, Alabama (September 2013)
- **Seeing is Believing: Presenting Electronic Evidence to a Jury**, Upper Michigan Legal Institute (May 2013)
- **ESI as a Teaching Tool for Juries**, Michigan Young Lawyers Section (June 2013)
- **Opening the Large Paper Case in the Digital Age**, CJA Panel Attorneys Seminar (September 2012)
- FBA Panel Discussion with Judge Robert Cleland, Judge David Lawson, Daniel Lemisch, Chief of the Criminal Division (U.S. Attorney's Office, Detroit), FBI Special Agent Matthew Zentz and Joseph Richotte on ESI and federal criminal practice (May 2012)
- **Criminal Defense Series: Trial Strategy and Tactics**, ICLE (June 2012)
- **The Nimble and the Lazy: ESI and Criminal Practice**, Criminal Defense Attorneys of Michigan Spring Conference (March 2012)
- **Advanced Overview of New Forms of Electronic Discovery**, Criminal Defense Attorneys of Michigan Fall Conference (November 2011)
- **Electronic Discovery**, Criminal Defense Attorneys of Michigan, Spring Conference (March 2011)
- Presenter, Human Rights Symposium in Yoshkar Ola, Russia (June 2005)